

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANE DOE,

Plaintiff,

CIVIL ACTION NO. 06-CV-12493-DT

VS.

DISTRICT JUDGE SEAN F. COX

TECUMSEH PUBLIC
SCHOOLS, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT PETERSON'S MOTION TO COMPEL DISCOVERY**

Before the Court is Defendant Rachel Peterson's Motion to Compel Discovery filed on January 18, 2007. (Docket no. 33). Plaintiff has responded to the motion. (Docket no. 41). The Court previously scheduled a hearing on this motion but by Order entered on April 17, 2007 cancelled the hearing. (Docket no. 51). The Court dispenses with oral argument pursuant to E.D. Mich. L.R. 7.1(e). The matter has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). The motion is now ready for ruling.

Defendant served her First Set of Interrogatories and First Request for Production of Documents on June 22, 2006. (Docket no. 33, exs. A & B). Plaintiff failed to respond within the 30 days allowed under Fed. R. Civ. P. 33 and 34. On July 25, 2006 Defendant's counsel wrote Plaintiff's counsel requesting a response. (*Id.* ex. C). Defendant states that Plaintiff still has not responded. Defendant therefore requests an order compelling Plaintiff to answer and respond to the discovery that has been served.

Plaintiff does not dispute that she has failed to respond to these discovery requests. Plaintiff's counsel states that he phoned Defendant's counsel upon receipt of this motion to compel. In that

phone conference, Plaintiff's counsel states that he "indicated that the Discovery sought would be unnecessary because the Plaintiff had recently filed a Motion for Default Judgment Against Co-Defendant, Matthew Peterson." (Docket no. 41 at 2). Counsel for Plaintiff further states that he "indicated that upon receipt of the Judgment of Default against Matthew Peterson, that it was Plaintiff's plan to dismiss this case against Defendant Rachel Peterson without prejudice." (*Id.*) Plaintiff contends that the motion need not be resolved.

Because this motion has not been withdrawn, the Court will decide it. Plaintiff has not shown a good reason for not responding to Defendant's Interrogatories and Requests for Production. Judge Cox recently set aside the Clerk's entry of default against Matthew Peterson. (Docket no. 52). Therefore, even if the pending motion for default judgment were a valid reason for not responding to Defendant's discovery requests, it no longer justifies the failure to respond. Plaintiff must therefore serve full and complete answers and responses to these discovery requests.

There is one overriding problem with Defendant's Interrogatories, however: they are 43 in number. Under Fed. R. Civ. P. 33(a), absent leave of court or written stipulation, neither of which is present here, a party may serve interrogatories not exceeding 25 in number including all discrete subparts. Including subparts there are 25 interrogatories included within Defendant's Interrogatories 1-5. However, Plaintiff may not be required to answer all of these because some are follow-up questions for which the necessity of answering is dependent upon the answer to the preceding question. The Court will therefore order Plaintiff to answer only the first 25 Interrogatories which include all discrete subparts.

IT IS THEREFORE ORDERED that Defendant Rachel Peterson's Motion to Compel Discovery (docket no. 33) is **GRANTED IN PART AND DENIED IN PART**. Plaintiff is ordered to serve full and complete answers to the first 25 Interrogatories including discrete subparts of

Defendant's First Set of Interrogatories on or before May 14, 2007, and to fully respond to Defendant's First Request for Production of Documents on or before May 14, 2007.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: April 20, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: April 20, 2007

s/ Lisa C. Bartlett
Courtroom Deputy